

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TROY D. HOWARD	§	
(BOP Register No. 28268-064)	§	
	§	
Petitioner,	§	
	§	
V.	§	No. 3:20-cv-766-S-BN
	§	
STATE OF TEXAS,	§	
	§	
Respondent.	§	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Troy D. Howard, a federal prisoner, incarcerated in the Eastern District of Virginia, filed this *pro se* action, requesting that this Court order a state court in Dallas County “to acknowledge receipt” of a motion to amend the judgment in a civil action filed in Dallas County in 1997. *See* Dkt. No. 3.

Howard’s action has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from the presiding United States district judge.

The Court should liberally construe this action as requesting that a federal court compel a state court to take action in a lawsuit filed in state court, something Howard argues a federal court “has subject matter jurisdiction over.” Dkt. No. 3 at 2.

The federal mandamus statute, 28 U.S.C. § 1361, provides “district courts [with] original jurisdiction of any action in the nature of mandamus to compel an officer or agency of the United States or any agency thereof to perform a duty owed to the

plaintiff.” *Id.*

But that statute does not give federal courts the authority to compel state officers or agencies to act. *See, e.g., Moore v. 204th Dist. Ct.*, No. 3:08-cv-2281-D, 2009 WL 3150983, at *3 (N.D. Tex. Sept. 29, 2009) (“Federal courts lack the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties.” (citing *Moye v. Clerk, Dekalb Cnty. Sup. Ct.*, 474 F.2d 1275, 1276 (5th Cir. 1973))).

And a court, even a federal court, is not considered an “agency” under the mandamus statute:

A court is not an officer, employee or agency of the United States against whom a writ of mandamus under § 1361 may be issued. *See Chandler v. Judicial Council of Tenth Circuit*, 398 U.S. 74, 94 (1970) (Harlan, J. concurring) (“The District Court mandamus statute, § 1361, extends to ‘officers,’ ‘employees,’ and ‘agencies’ of the United States; there is no indication that it empowers the District Courts to issue mandamus to other judicial tribunals.”); *Liberation News Service v. Eastland*, 426 F.2d 1379, 1384 (2d Cir. 1970) (“in enacting § 1361 ... , Congress was thinking solely in terms of the executive branch”). Although the Fifth Circuit Court of Appeals does not appear to have specifically addressed this issue, other circuits and courts have found that district courts lack jurisdiction to issue writs of mandamus to other courts, whether higher or equal.

Whaley v. U.S. Court of Appeals Fifth Circuit / Office of Clerk, No. 3:18-cv-2816-C-BH, 2018 WL 7118009, at *3 (N.D. Tex. Dec. 31, 2018) (collecting cases), *rec. adopted*, 2019 WL 319579 (N.D. Tex. Jan. 23, 2019).

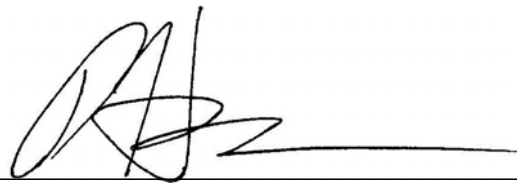
The Court therefore lacks jurisdiction over this action.

Recommendation

The Court should dismiss this action for lack of subject matter jurisdiction.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: April 10, 2020

A handwritten signature in black ink, appearing to read 'D. Horan', written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE